

HOUSE BILL 2165

By Briley

AN ACT to amend Tennessee Code Annotated, Title 46,
relative to cemetery companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 46, Chapter 2, Part 3, is amended by
adding a new section thereto, as follows:

Section 46-2-310.

(a) When the improvement care trust fund has become sufficiently large that the net earnings therefrom will ensure the permanent maintenance and upkeep of such cemetery, and the officers and board of directors are of the opinion that it is no longer necessary to continue to set aside the twenty percent (20%) to the improvement care trust fund, or any part thereof, for the purpose of maintaining, keeping up and beautifying such cemetery, the board of directors may, in a regular or special meeting, pass a resolution so declaring such belief.

(b) The cemetery company is then authorized to file a petition in the name of the company in the chancery court of the county where such cemetery is located or in the chancery court of Davidson County, stating the passage of such resolution and other pertinent facts as it may desire, and asking that the cemetery company no longer be required to continue to make contributions to the improvement care trust fund or that the contributions be reduced. The petition shall be filed against the governor and the attorney general and reporter, or in lieu of the attorney general and reporter, against the district attorney general of the county in which the petition is filed, and it shall be the duty of the defendants to make such necessary and proper defense thereto as to them may appear proper.

(c) Upon a final hearing of the issues, the chancery court may refuse to grant any relief whatsoever, may grant all of the relief prayed for, or may grant such partial relief as may appear proper to the court. The case shall be kept on the docket of the court, subject to such further orders and decrees as may from time to time appear proper upon such additional showing as may be made under any supplemental petition filed by the original complainants, on behalf of the state, or by any lot owner or descendant or next of kin of a lot owner who may be entitled to any relief.

(d) The cost and expenses of the proceeding provided in this section shall be taxed against the complainant, including reasonable attorney's fees to the opposing attorney. Such cost and expenses shall be set by the court.

SECTION 2. Tennessee Code Annotated, Section 46-1-204, is amended by deleting subsection (e) in its entirety and by substituting instead the following:

(e)

(1) As used in this subsection, unless the context otherwise requires:

(A) "Net earnings" means:

- (i) All net income, excluding capital gains; or
- (ii) An amount not exceeding five percent (5%) of the fair market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year. This amount is not reduced by taxes or fees unless the fees exceed two and one-half percent (2.5%) of the market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year, and if any fees exceed two and one half percent (2.5%) of the market value of the trust as of the last day of the preceding fiscal

year, then the amount of the disbursement shall be reduced by such excess; and

(B) "Net income" means the collected dividends, interest and other income of the trust reduced by taxes on income and fees.

(2) The net earnings of each improvement care trust fund shall be paid to and shall be used and expended by the owners or officers and directors of the cemetery company, or by the trustee of the improvement care trust fund while the cemetery is not being operated by its owner, for the improvement care of the cemetery or separate geographical location of the cemetery for which the fund was established, and for no other purpose.

(3) While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement care of the cemetery. In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their capital. Within the limitations of the foregoing standard, subject to any express provisions of limitations contained in any particular trust instrument, the trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment. specifically included, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own accounts.

(4)

(A) A cemetery owner may select a method to calculate the net earnings of a trust for the first fiscal year in which this act is effective by delivering written instructions to the trustee of the fund by no later than sixty (60) days prior to the end of that fiscal year.

(B) A cemetery owner may select a method of calculation to be used for any given fiscal year by using either subdivision (e)(1)(A)(i) or (e)(1)(A)(ii). A cemetery owner shall provide the trustee with written instructions of which method of calculation has been chosen by no later than the last day of the preceding fiscal year. In the event that the method of calculation chosen by the cemetery owner prior to the start of the fiscal year would result in lower disbursements than would the other calculation, then the cemetery owner may provide the trustee with written instructions by no later than sixty (60) days prior to the end of the fiscal year to change the method of calculation.

(C) In the event that the trustee does not receive written instructions for a given fiscal year from the cemetery owner informing him or her of the method of calculation chosen or the trustee has never received any written instructions of the method of calculation chosen, then the trustee shall calculate and disburse funds in accordance with subdivision (e)(1)(A)(i).

(D)

(i) In order to withdraw up to five percent (5%) of a trust that is already in existence upon the effective date of this act in accordance with subdivision (e)(1)(A)(ii), the current market value

of the trust after the withdrawal shall be greater than $.90 \times [MV(T) + C]$. T represents the effective date of this statute. MV represents the principal market value of the trust at T. C represents the total contributions made to the trust principal from T to the date that the method of calculation is selected.

(ii) In order to withdraw up to five percent (5%) of a trust that is established after the effective date of this act in accordance with subdivision (e)(1)(A)(ii), the current market value after the withdrawal shall be greater than $.90 \times [MV(N) + C]$. MV(N) represents the principal market value of the trust that will be determined at the end of the trust's fiscal year. C represents contributions made to the principal after the first completed fiscal year.

(iii) Disbursements from the trust that are calculated pursuant to subdivision (e)(1)(A)(ii) shall be made on a monthly, quarterly, semi-annually or annual basis.

(E) In order for a cemetery owner to receive distributions from the trust that are calculated by using either method of calculation in subdivision (e)(1)(A)(i) or (e)(1)(A)(ii), the cemetery owner shall:

(i) Be current on payment of the annual registration fee.

The cemetery owner shall certify to the trustee on forms provided by the commissioner that the cemetery is registered with the department; and

(ii) Be current on required deposits to the trust or make payments on any arrearages through special arrangements with

the commissioner. At the commissioner's discretion, the commissioner may allow cemetery owners to make payments on arrearages. The cemetery owner shall certify to the trustee on forms provided by the commissioner that he or she is current on required deposits or is making payments on arrearages.

SECTION 3. This act shall take effect July 1, 2007, the public welfare requiring it.